

STATE OF VERMONT

SUPERIOR COURT
Franklin Unit

CIVIL DIVISION
Case No. 21-CV-01135

STATE OF VERMONT, AGENCY
OF NATURAL RESOURCES,
Plaintiff,

v.

DEAN WRIGHT and
ANGELA WRIGHT,
Defendants.

CONSENT ORDER and FINAL JUDGMENT ORDER

This action came before the Court pursuant to the parties' filing of Pleadings by Agreement under Vermont Rule of Civil Procedure 8(g). Based upon those Pleadings by Agreement and the parties' Stipulation for the Entry of Consent Order and Final Judgment Order, and pursuant to 10 V.S.A. § 8221, 3 V.S.A. § 157, and the Court's inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

VIOLATIONS

1. Plaintiff, State of Vermont, has alleged violations of 10 V.S.A. § 1259, as set forth in Paragraph 28 of the parties' Pleadings by Agreement. Defendants admit the factual allegations set forth in Paragraphs 12 through 27 of the Pleadings by Agreement solely for purposes of resolving this case, and neither admit nor deny liability for the alleged violations but agree to the entry of this Consent Order and Final Judgment Order to resolve this matter. Defendants agree that each of the

violations alleged in Paragraph 28 of the Pleadings by Agreement is deemed proven and established as a “prior violation” in any future State proceeding considering Defendant’s compliance record including but not limited to administrative or judicial enforcement actions for civil penalties calculated pursuant to 10 V.S.A. § 8010, and permit proceedings.

RELIEF

2. For the violations described above, Defendants shall pay a civil penalty of six thousand, five hundred dollars (\$6,500), in three payments as follows:

- a. \$2,000.00 no later than 30 days after the date this Order is issued.
- b. \$2,000.00 no later than July 1, 2021.
- c. \$2,500.00 no later than August 1, 2021.

3. The civil penalty payments set forth in the preceding paragraph shall be made to the “State of Vermont” and shall be sent to Melanie Kehne, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, VT, 05609-1001.

4. In the event that Defendants fail to make any payment as set forth in the preceding paragraphs, such failure shall constitute a breach of this Consent Order and Final Judgment Order, the entire unpaid amount shall become due immediately, and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum. Defendants shall also be liable for costs incurred by the State, including reasonable attorney’s fees, to collect any unpaid penalty amount.

5. Defendants shall eliminate the discharge of waste to State waters and implement corrective measures in accordance with the terms and conditions of

interim and permanent plans approved by ANR. Defendants shall submit such plans in accordance with the following:

a. Within fifteen (15) days of the date of this Order, Defendants shall submit to ANR for its review and approval an interim plan to manage waste until permanent control measures are implemented (the “Interim Plan”). At a minimum, the Interim Plan shall include but is not limited to the following:

i. A plan to ensure that there are no discharges of waste to State waters prior to the implementation of permanent control measures;

ii. An implementation schedule that includes a commencement date no later than three (3) consecutive calendar days following ANR approval of the Interim Plan;

iii. A monthly report, which shall be submitted on or before the 30th of each month until the approved permanent Corrective Action Plan is fully implemented, describing weekly inspections and documenting (with photographs) the waste management conditions at the farm, including a description of any discharges that occurred;

iv. Information demonstrating the operation’s waste storage capacity shall be submitted. Sources of information relevant to this subsection may include the Manure and Wastewater Handling Plan associated with the manure pit expansion, and/or a release authorizing ANR staff to request this information from the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS); and

v. A process for identifying and implementing additional interim measures determined by ANR to be necessary to eliminate discharges until permanent control measures are implemented.

b. Within thirty (30) days of the date of this Order, Defendants shall submit to ANR for its review and approval a permanent plan to eliminate the discharge of waste to State waters (the “Corrective Action Plan”). At a minimum, the Corrective Action Plan shall include, but is not limited to:

i. Construction of a barrier to ensure that leachate cannot reach the barn footer drain;

ii. Diversion of the ditch into the field north of the bunks, away from the tributary to the Tyler Branch;

iii. The abandonment of the vegetative treatment area for leachate treatment.

iv. Construction or acquisition of additional waste storage as necessary.

v. An implementation schedule with a completion date no later than September 1, 2021.

c. ANR shall have sole discretion in approving the Interim Plan and the permanent Corrective Action Plan. In the event that ANR rejects a proposed Interim Plan or proposed Corrective Action Plan, Defendant shall revise and resubmit the relevant Plan to ANR no later than five (5) consecutive calendar days following any rejection, repeating the process as needed until the relevant Plan is approved.

d. No later than seven (7) consecutive calendar days following the completion of the Corrective Action Plan, Defendant shall notify ANR to obtain written confirmation that Defendant has eliminated the discharge to the ANR's satisfaction. If ANR determines that the Corrective Action Plan has not been effective in eliminating the discharge, Defendant shall take all additional measures determined by ANR to be reasonable and necessary to eliminate the discharge.

6. Nothing herein relieves Defendants of the obligation to obtain any and all regulatory approvals necessary to implement the Plan, including but not limited to any required permits.

7. Until the approved Plan described herein is fully implemented, Defendants agree to allow ANR access to the Farm to conduct inspections to confirm compliance with this Order. This access shall be in addition to the State's existing authorities regarding access.

8. Unless otherwise specified, all information required by this Order to be sent to ANR shall be sent to ANR by email to Clarice Cutler at clarice.cutler@vermont.gov.

OTHER PROVISIONS

9. Defendants waive: (a) all rights to contest or appeal this Consent Order and Final Judgment Order; and (b) all rights to contest the obligations imposed upon Defendants under this Consent Order and Final Judgment Order in this or any other administrative or judicial proceeding involving the State of Vermont.

10. This Consent Order and Final Judgment Order is binding upon the Defendants and any and all of their successors and assigns. Any change in Defendants' ownership, corporate, or other legal status, including but not limited to any transfer of assets, shall in no way alter the responsibilities of Defendants, their successors, or their assigns under this Consent Order and Final Judgment Order.

11. Nothing in this Consent Order and Final Judgment Order shall be construed to create or deny any rights in, or grant or deny any cause of action to, any person not a party to this Consent Order and Final Judgment Order.

12. This Consent Order and Final Judgment Order shall become effective only after it is entered as an order of the Court. When so entered by the Court, this Judgment Order shall become final.

13. Any violation of this Consent Order and Final Judgment Order shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt, as set forth in 10 V.S.A. Chapters 201 and 211.

14. The State of Vermont and this Court reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the specific facts described herein or in the Stipulation for the Entry of Final Judgment Order.

15. Defendants shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Stipulation for the Entry of Final Judgment Order.

16. Nothing in this Consent Order and Final Judgment Order shall be construed as having relieved, modified, or in any manner affected each Defendant's

obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to Defendants.

17. This Consent Order and Final Judgment Order may be altered, amended, or otherwise modified only by subsequent written agreement signed by the parties hereto, or their legal representatives, and approved by this Court. Any representations not set forth in this Consent Order and Final Judgment Order, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.

SO ORDERED, and ENTERED as FINAL JUDGMENT.

Electronically signed pursuant to V.R.E.F. 9(d)
06/03/2021 1:35:38 PM



Hon. Robert A. Mello
Superior Court Judge